

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference P242503PC-WT	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/EP2004/000317	International filing date (day/month/year) 16-01-2004	Priority date (day/month/year) 16-01-2003
International Patent Classification (IPC) or national classification and IPC A61K 7/48		
Applicant COTY B.V.		

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 6 sheets, including this cover sheet.

3. This report is also accompanied by ANNEXES, comprising:

a. ☒ (sent to the applicant and to the International Bureau) a total of 2 sheets, as follows:

☒ sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).

☐ sheets which supersedes earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.

b. ☐ (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) \_\_\_\_\_, containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I	Basis of the report
<input type="checkbox"/>	Box No. II	Priority
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/>	Box No. IV	Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input type="checkbox"/>	Box No. VI	Certain documents cited
<input type="checkbox"/>	Box No. VII	Certain defects in the international application
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application

Date of submission of the demand 12-11-2004	Date of completion of this report 20-04-2005
Name and mailing address of the IPEA/  Facsimile No.	Authorized officer  Telephone No.

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/000317

Box No. I

Basis of the report

1. With regard to the language, this report is based on:

- ☐ the international application in the language in which it was filed
- ☐ the translation of the international application into \_\_\_\_\_, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3(a) and 23.1(b))
- ☐ publication of the international application (Rule 12.4(a))
- ☐ international preliminary examination (Rule 55.2(a) and/or 55.3(a))

2. With regard to the elements of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):

- ☒ the international application as originally filed/furnished
- ☐ the description:
- pages 2-10 \_\_\_\_\_ as originally filed/furnished
- pages\* 1 \_\_\_\_\_ received by this Authority on 12.11.2004 with letter of 12.11.2004
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

- ☒ the claims:
- pages \_\_\_\_\_ as originally filed/furnished
- pages\* \_\_\_\_\_ as amended (together with any statement) under Article 19
- pages\* 1-10 \_\_\_\_\_ received by this Authority on 12.11.2004 with letter of 12.11.2004
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

- ☐ the drawings:
- pages \_\_\_\_\_ as originally filed/furnished
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_
- pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (specify): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (specify): \_\_\_\_\_

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/figs \_\_\_\_\_
- ☐ the sequence listing (specify): \_\_\_\_\_
- ☐ any table(s) related to sequence listing (specify): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/000317

**Box No. V** Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

## 1. Statement

Novelty (N)	Claims	1-10	YES
	Claims		NO
Inventive step (IS)	Claims		YES
	Claims	1-10	NO
Industrial applicability (IA)	Claims	1-10	YES
	Claims		NO

## 2. Citations and explanations (Rule 70.7)

## 1. Reference is made to the following documents:

D1: WO 86/05389 A (PRODUCT RESOURCES INT)  
25 September 1986 (1986-09-25)

D2: EP-A-1 172 088 (OREAL)  
16 January 2002 (2002-01-16)

D3: PATENT ABSTRACTS OF JAPAN, vol. 016, no. 315  
(C-0961), 10 July 1992 (1992-07-10)  
& JP 04 089424 A (TOUYOU EAZOORU KOUGIYOU KK),  
23 March 1992 (1992-03-23).

2.1 Document D1 is considered to be the prior art closest to the subject matter of claims 1 and 7. Said document discloses (the references in parentheses are to D1) a composition containing a liquid oil, a foaming component, a propellant and exothermic particles (claim 1). The particles are zeolites with an Al/Si ratio of between 0.1 and 1.1. The zeolites contain less than 5% water (page 9, lines 18-26).

In all the examples, triglycerides are used as the liquid oil.

/...

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Non-ionic surface-active agents in the form of sorbitan stearates, PEG-400 dioleates or lecithin are used. The softeners used have to be glycerol stearates, silicone oils or isobutyl isobutyrate. Cabosil M-5 is used as a thickening agent, instead of polyethylene, 12-hydroxystearic acid, clay, castor oil derivatives or waxes as claimed in the present claims. The addition of polyvalent alcohols is not disclosed, nor do any of the examples in document D1 contain polyvalent alcohols.

Thus, the only difference between the examples of D1 and the present application is in the choice of thickening agent.

2.2 The problem addressed by the present invention can therefore be regarded as that of formulating an alternative self-heating cosmetic preparation.

2.3 The solution to this problem, as proposed in claims 1 and 7 of the present application, involves an inventive step (PCT Article 33(3)), the reasons being as follows:

a person skilled in the art would turn to D1 as the closest prior art since said document deals with self-heating, zeolite-based cosmetic preparations. Also mentioned is the pleasant silky feel on the skin (page 3, lines 2-7).

/...

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

According to the definition of the zeolite claimed in the present application, said zeolite is hydrophilic and aluminium-rich with a particular pore size. In the present description (but not in the claims!) "aluminium-rich" is defined in terms of an Si/Al ratio of between 2:1 and 5:1. This can also be given as a ratio of Al/Si of between 0.2 and 0.5. However, this entire range is within the range of between 0.1 and 1.1 according to D1 (see claim 5).

The product according to the present application is further defined as being "substantially water-free". The expression "substantially" does not have an unambiguous meaning and cannot be used for the purpose of delimitation.

It is not evident what properties of the zeolite give rise to a potentially improved generation of heat.

At present, there is no apparent difference between the zeolites of the present application and the zeolites of D1.

The only difference lies in the thickening agent. It has not been disclosed that the choice of thickening agent affects the heating properties or the feel on the skin.

/...

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/000317

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement

- 2.4 Independent claims 1 and 7 fail to satisfy the requirement of inventive step (PCT Article 33(3)).
3. The applicant is advised that a positive examination report in respect of the dependent claims can be established only if said claims relate to an independent claim that satisfies the requirements of the PCT. However, the subject matter of certain of the dependent claims is either disclosed in D1 or rendered obvious by D2 or D3.